

AMENDED IN ASSEMBLY JUNE 29, 2000

AMENDED IN ASSEMBLY JUNE 14, 2000

AMENDED IN SENATE MAY 2, 2000

SENATE BILL

No. 1967

Introduced by Senator Kelley

February 25, 2000

An act to amend Section ~~13401~~ of 17375 of, and to add Section 13401.3 to, the Corporations Code, and to amend Sections 714, 720, 732, 733, and 739 of, and to add Section 729.5 to, the Harbors and Navigation Code, relating to yacht and ship brokers.

LEGISLATIVE COUNSEL'S DIGEST

SB 1967, as amended, Kelley. Yacht and Ship Brokers Act.

(1) Existing law regulates limited liability companies and provides that nothing in that law is to be construed to permit a domestic or foreign limited liability company to render professional services, as defined. Existing law defines "professional services," for that purpose, to mean any type of professional services that may be lawfully rendered pursuant to a license, certification, or registration authorized by the Business and Professions Code, or the Chiropractic Act.

This bill would include within the definition of "professional services" for that purpose any type of professional services that may be lawfully rendered under the Yacht and Ship Brokers Act.

(2) The existing Yacht and Ship Brokers Act authorizes the Department of Boating and Waterways to require the proof

that it deems advisable concerning the honesty, truthfulness, and good reputation of the applicant for a yacht broker's license or of the officers of any corporation making application before the issuance of the license. Existing law requires a licensed broker who accepts funds from others to deposit those funds into a neutral escrow depository.

This bill would also authorize the department to require that proof concerning each applicant for a salesperson's license.

The bill would require any limited liability company licensed by the department as a yacht broker on July 1, 2001, in order to continue to be licensed after that date, to apply to the department as an individual, partnership, or corporation for a broker's license on or before the expiration date of its existing license. The bill would require the department, by February 1, 2001, to provide notice of this requirement to any limited liability company licensed by the department.

The bill would expand the conditions for which the department may deny an application or suspend or revoke the licenses of a broker or salesperson.

This bill would also permit a consent to use funds in escrow for a purpose other than that specified in the written instructions to be given the yacht broker by a facsimile.

(3) Existing law requires that every civil action brought under the act be brought by the Attorney General.

This bill would authorize administrative actions to be brought under the act and to be brought through the Office of Administrative Hearings.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 13401 of the Corporations Code~~
2 ~~is amended to read:~~
3 ~~13401. As used in this part:~~
4 ~~(a) "Professional services" means any type of~~
5 ~~professional services that may be lawfully rendered only~~
6 ~~pursuant to a license, certification, or registration~~
7 ~~authorized by the Business and Professions Code or the~~

1 ~~Chiropractic Act, or the Yacht and Ship Brokers Act~~
2 ~~(Article 2 (commencing with Section 700) of Chapter 5~~
3 ~~of Division 3 of the Harbors and Navigations Code).~~

4 ~~(b) "Professional corporation" means a corporation~~
5 ~~organized under the General Corporation Law or~~
6 ~~pursuant to subdivision (b) of Section 13406 that is~~
7 ~~engaged in rendering professional services in a single~~
8 ~~profession, except as otherwise authorized in Section~~
9 ~~13401.5, pursuant to a certificate of registration issued by~~
10 ~~the governmental agency regulating the profession as~~
11 ~~herein provided and that in its practice or business~~
12 ~~designates itself as a professional or other corporation as~~
13 ~~may be required by statute. However, any professional~~
14 ~~corporation or foreign professional corporation~~
15 ~~rendering professional services by persons duly licensed~~
16 ~~by the Medical Board of California or any examining~~
17 ~~committee under the jurisdiction of the board, the Board~~
18 ~~of Dental Examiners, the California State Board of~~
19 ~~Pharmacy, the Veterinary Medical Board, the California~~
20 ~~Board of Architectural Examiners, the Court Reporters~~
21 ~~Board of California, the Board of Behavioral Sciences, or~~
22 ~~the Board of Registered Nursing shall not be required to~~
23 ~~obtain a certificate of registration in order to render those~~
24 ~~professional services.~~

25 ~~(c) "Foreign professional corporation" means a~~
26 ~~corporation organized under the laws of a state of the~~
27 ~~United States other than this state that is engaged in a~~
28 ~~profession of a type for which there is authorization in the~~
29 ~~Business and Professions Code for the performance of~~
30 ~~professional services by a foreign professional~~
31 ~~corporation.~~

32 ~~(d) "Licensed person" means any natural person who~~
33 ~~is duly licensed under the provisions of the Business and~~
34 ~~Professions Code or the Chiropractic Act to render the~~
35 ~~same professional services as are or will be rendered by~~
36 ~~the professional corporation or foreign professional~~
37 ~~corporation of which he or she is or intends to become, an~~
38 ~~officer, director, shareholder, or employee.~~

39 ~~(e) "Disqualified person" means a licensed person~~
40 ~~who for any reason becomes legally disqualified~~

~~1 (temporarily or permanently) to render the professional
2 services that the particular professional corporation or
3 foreign professional corporation of which he or she is an
4 officer, director, shareholder, or employee is or was
5 rendering.~~

6 *SECTION 1. Section 13401.3 is added to the
7 Corporations Code, to read:*

8 *13401.3. As used in this part, “professional services”
9 also means any type of professional services that may be
10 lawfully rendered only pursuant to a license, certification,
11 or registration authorized by the Yacht and Ship Brokers
12 Act (Article 2 (commencing with Section 700) of Chapter
13 5 of Division 3 of the Harbors and Navigations Code).*

14 *SEC. 1.5. Section 17375 of the Corporations Code is
15 amended to read:*

16 *17375. Nothing in this title shall be construed to
17 permit a domestic or foreign limited liability company to
18 render professional services, as defined in subdivision (a)
19 of Section 13401 and in Section 13401.3, in this state.*

20 *SEC. 2. Section 714 of the Harbors and Navigation
21 Code is amended to read:*

22 *714. A licensed broker who accepts funds from others
23 in connection with any transaction subject to this article
24 who does not, as soon as possible, place those funds into
25 a neutral escrow depository, shall place the funds into a
26 trust fund account maintained by the broker in some
27 bank or recognized depository and shall retain all the
28 funds in the account until the broker makes a
29 disbursement of the funds in accordance with written
30 instructions from the person entrusting the money. The
31 written instructions shall also set forth the specific
32 purposes for which the broker may use money deposited
33 with him or her. If the broker wishes to use money from
34 the deposit for a purpose not included in the written
35 instructions, the broker shall first obtain the written
36 consent of the person entrusting the money specifically
37 authorizing the use proposed by the broker for the
38 money. The written consent may be given to the broker
39 by a letter or facsimile. A separate record shall be
40 maintained of all moneys received subject to this section*

1 and shall further indicate the disposition thereof. Any
2 funds received by a licensed salesperson shall be
3 delivered by the salesperson to the broker under whom
4 the salesperson is at the time licensed.

5 As used in this section, “neutral escrow” means an
6 escrow business conducted by a person licensed under
7 Division 6 (commencing with Section 17000) of the
8 Financial Code or by any person described by subdivision
9 (a) or (c) of Section 17006 of the Financial Code.

10 SEC. 2.5. Section 720 of the Harbors and Navigation
11 Code is amended to read:

12 720. The department may require proof as it deems
13 advisable concerning the honesty, truthfulness, and good
14 reputation of the applicant for a broker’s or salesperson’s
15 license or of the officers of any corporation making
16 application before the issuance of a broker’s license. For
17 this purpose, the director may call a hearing in
18 accordance with this article, and at the request of the
19 applicant shall call a hearing.

20 SEC. 3. Section 729.5 is added to the Harbors and
21 Navigation Code, to read:

22 729.5. (a) Any limited liability company licensed by
23 the department as a yacht broker on July 1, 2001, in order
24 to continue to be licensed after that date, shall apply to
25 the department in the form of an individual, partnership,
26 or corporation for a broker’s license on or before the
27 expiration date of its existing license.

28 (b) On or before February 1, 2001, the department
29 shall provide notice of the requirements imposed by
30 subdivision (a) to any limited liability company licensed
31 by the department.

32 SEC. 4. Section 732 of the Harbors and Navigation
33 Code is amended to read:

34 732. The department may deny an application or
35 temporarily suspend or permanently revoke the license
36 of a broker or a salesperson at any time if the licensee,
37 while a broker or salesperson, in performing or
38 attempting to perform any of the acts within the scope of
39 this article, has committed any of the following acts:

- 1 (a) Makes any substantial misrepresentation,
2 including a false advertisement or an omission of relevant
3 facts upon which any person has relied.
- 4 (b) Makes a false warranty of a character likely to
5 influence, persuade, or induce any person with whom
6 business is transacted under this article.
- 7 (c) Engages in a continued and flagrant course of
8 misrepresentation or makes false warranties whether or
9 not relied upon by another person.
- 10 (d) Acts for the buyer and seller in a transaction
11 without full disclosure of that fact to the buyer and seller
12 and their written consent, except in the case where the
13 selling broker is not the listing broker.
- 14 (e) Commingles the money or other property of his or
15 her principal with that of his or her own or uses it for any
16 purpose other than that for which it was entrusted, when
17 the yacht involved in the transaction is not his or her own.
- 18 (f) Disburses or uses entrusted money for purposes
19 other than those specifically authorized by Section 714.
- 20 (g) Uses coercive or oppressive methods for the
21 purpose of obtaining business or of procuring a listing or
22 participating in a transaction.
- 23 (h) Quotes prices different from the gross listing
24 prices without the consent of the seller.
- 25 (i) Engages in any other conduct constituting fraud or
26 dishonest dealings, either with respect to his or her
27 principal or other persons.
- 28 (j) Permits his or her name to be used for the purpose
29 of assisting any person who is not a licensed broker or
30 salesperson to evade this article.
- 31 (k) Demonstrates negligence or incompetence in
32 performing any act for which he or she is required to hold
33 a license.
- 34 (l) As a broker licensee, fails to exercise reasonable
35 supervision over the activities of his or her salespersons,
36 or, as the person designated by a corporate or partnership
37 licensee, fails to exercise reasonable supervision and
38 control over the activities of the corporation or
39 partnership for which a yacht and ship broker's license is
40 required.

1 (m) Fails to act in accordance with, or disregards, his
2 or her fiduciary duty toward a principal.

3 (n) Violates any provisions of Section 708, 712, 714, 715,
4 716, 730, or 731, or the rules and regulations of the
5 department implementing this article.

6 SEC. 5. Section 733 of the Harbors and Navigation
7 Code is amended to read:

8 733. The department may deny an application or may
9 suspend or revoke the license of a yacht broker or yacht
10 salesperson who, within four years immediately
11 preceding, has committed any of the following acts:

12 (a) Has procured a license under this article for
13 himself or herself or another by fraud, misrepresentation,
14 or deceit.

15 (b) Has been convicted of a felony or any crime
16 involving moral turpitude.

17 (c) Has withheld information from the department
18 that he or she at any time has been convicted of a felony
19 or any crime involving moral turpitude.

20 (d) Knowingly authorizes, directs, connives, or aids in
21 the publication, advertisement, distribution, or
22 circulation of any material false statements or
23 misrepresentation concerning his or her business or any
24 transaction under this article.

25 (e) Has acted or conducted himself or herself in a
26 manner that would warrant the denial of his or her
27 application for a broker's or salesperson's license
28 pursuant to Section 720.

29 SEC. 6. Section 739 of the Harbors and Navigation
30 Code is amended to read:

31 739. Any person who violates any provision of this
32 article, or any regulation adopted pursuant to this article,
33 is liable for a penalty in an amount not less than one
34 hundred dollars (\$100) and not to exceed one thousand
35 five hundred dollars (\$1,500) for each separate violation.
36 The penalties provided in this section are in addition to
37 the remedies or penalties available under all other laws
38 of this state.

39 Every civil or administrative action brought under this
40 article at the request of the director shall be brought by

1 the Attorney General in the name of the people of the
2 State of California, in any court of competent jurisdiction,
3 or through the Office of Administrative Hearings
4 pursuant to Section 737, except that, when the civil action
5 is to be filed in a small claims court, the director may bring
6 the action.

7 The amount of penalty that is assessed pursuant to this
8 section on each count of violation shall be based upon the
9 nature of the violation and the seriousness of the effect of
10 the violation upon the implementation of the purposes
11 and provisions of this article. Any sum that is recovered
12 under this section shall be deposited in the State Treasury
13 to the credit of the Harbors and Watercraft Revolving
14 Fund.

